

SECOND REGULAR SESSION

HOUSE BILL NO. 1903

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LIESE.

Read 1st time February 12, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4481L.01I

AN ACT

To repeal section 375.246, RSMo, and to enact in lieu thereof one new section relating to reinsurance.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 375.246, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 375.246, to read as follows:

375.246. 1. **The purpose of this section is to protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally. Upon the insolvency of a nonUnited States insurer or reinsurer that provides security to fund its United States obligations in accordance with this section, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance department with regulatory oversight, and the assets shall be distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies.**

2. Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a [deduction] **reduction** from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subdivisions (1) to [(4)] **(5)** of this subsection. [If meeting the requirements of subdivision (3) or (4) of this subsection, the requirements of subdivision (5) must also be met.] **Credit shall be allowed pursuant to subdivision (1), (2), or (3) of this subsection only as respects cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of**

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 **domicile or, in the case of a United States branch of an alien assuming insurer, in the state**
18 **through which it is entered and licensed to transact insurance or reinsurance. Credit shall**
19 **be allowed pursuant to subdivision (3) or (4) of this subsection only if the applicable**
20 **requirements of subdivision (6) have been satisfied.**

21 (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer [which]
22 **that** is licensed to transact insurance in this state;

23 (2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer [which]
24 **that** is accredited as a reinsurer in this state. An accredited reinsurer is one [which] **that**:

25 (a) Files with the director evidence of its submission to this state's jurisdiction;

26 (b) Submits to the authority of the department of insurance to examine its books and
27 records;

28 (c) Is licensed to transact insurance or reinsurance in at least one state, or in the case of
29 a United States branch of an alien assuming insurer is entered through and licensed to transact
30 insurance or reinsurance in at least one state;

31 (d) Files annually with the director a copy of its annual statement filed with the insurance
32 department of its state of domicile and a copy of its most recent audited financial statement; and

33 (e) [Either:

34 a.] Maintains a surplus as regards policyholders in an amount [which is] not less than
35 twenty million dollars and whose accreditation has not been denied by the director within ninety
36 days of its submission; or

37 [b.] (f) Maintains a surplus as regards policyholders in an amount less than twenty
38 million dollars and whose accreditation has been approved by the director[;

39 c. The requirements in subparagraphs a and b of this paragraph do not apply to
40 reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same
41 holding company system;].

42

43 No credit shall be allowed a domestic ceding insurer if the assuming insurer's accreditation has
44 been revoked by the director after notice and hearing.

45 (3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer [which]
46 **that** is domiciled [and licensed] in, or in the case of a United States branch of an alien assuming
47 insurer is entered through, a state [which] **that** employs standards regarding credit for
48 reinsurance substantially similar to those applicable under this statute and the assuming insurer
49 or United States branch of an alien assuming insurer:

50 (a) Maintains a surplus as regards policyholders in an amount not less than twenty
51 million dollars; **except that this paragraph does not apply to reinsurance ceded and**
52 **assumed pursuant to pooling arrangements among insurers in the same holding company**

53 **system;** and

54 (b) Submits to the authority of the department of insurance to examine its books and
55 records;

56 (4) (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer
57 [which] **that** maintains a trust fund in a qualified United States financial institution, as defined
58 in subdivision (2) of subsection 3 of this section, for the payment of the valid claims of its United
59 States [policyholders and] ceding insurers, their assigns and successors in interest. **To enable**
60 **the director to determine the sufficiency of the trust fund,** the assuming insurer shall report
61 annually to the director information substantially the same as that required to be reported on the
62 National Association of Insurance Commissioners' annual statement form by licensed insurers
63 [to enable the director to determine the sufficiency of the trust fund. In the case of a single
64 assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's
65 liabilities attributable to business written in the United States and, in addition, the assuming
66 insurer shall maintain a trustee surplus of not less than twenty million dollars. In the case of
67 a group including incorporated and individual unincorporated underwriters, the trust shall consist
68 of a trustee account representing the group's liabilities attributable to business written in the
69 United States and, in addition, the group shall maintain a trustee surplus of which one hundred
70 million dollars shall be held jointly for the benefit of United States ceding insurers or any
71 member of the group. The incorporated members of the group shall not be engaged in any
72 business other than underwriting as a member of the group and shall be subject to the same level
73 of solvency regulation and control by the group's domiciliary regulator as are the unincorporated
74 members. The group shall make available to the director an annual certification of the solvency
75 of each underwriter by the group's domiciliary regulator and its independent public accountants;

76 (b) In the case of a group of incorporated insurers under common administration which
77 complies with the filing requirements contained in the previous paragraph, and which is under
78 the supervision of the Department of Trade and Industry of the United Kingdom and submits to
79 the authority of the department of insurance to examine its books and records and bears the
80 expense of such examination, and which has aggregate policyholders' surplus of ten billion
81 dollars; the trust shall be in an amount equal to the group's several liabilities attributable to
82 United States business ceded by United States ceding insurers to any member of the group
83 pursuant to reinsurance contracts issued in the name of such group; plus the group shall maintain
84 a joint trustee surplus of which one hundred million dollars shall be held jointly for the benefit
85 of United States ceding insurers or any member of the group as additional security for any such
86 liabilities, and each member of the group shall make available to the director an annual
87 certification of the member's solvency by the member's domiciliary regulator and its independent
88 public accountant;

89 (c) Such trust shall be established in a form approved by the director of insurance]. **The**
90 **assuming insurer shall submit to examination of its books and records by the director.**

91 (b) **Credit for reinsurance shall not be granted pursuant to this subdivision unless**
92 **the form of the trust and any amendments to the trust have been approved by:**

93 a. **The commissioner or director of the state agency regulating insurance in the**
94 **state where the trust is domiciled; or**

95 b. **The commissioner or director of another state who, pursuant to the terms of the**
96 **trust instrument, has accepted principal regulatory oversight of the trust.**

97 (c) **The form of the trust and any trust amendments shall also be filed with the**
98 **commissioner or director in every state in which the ceding insurer beneficiaries of the**
99 **trust are domiciled.** The trust instrument shall provide that contested claims shall be valid and
100 enforceable upon the final order of any court of competent jurisdiction in the United States. The
101 trust shall vest legal title to its assets in [the trustees of the trust for its United States
102 policyholders and] **its trustees for the benefit of the assuming insurer's United States ceding**
103 **insurers, their assigns and successors in interest.** The trust and the assuming insurer shall be
104 subject to examination as determined by the director.

105 (d) The trust [described herein must] **shall** remain in effect for as long as the assuming
106 insurer [shall have] **has** outstanding obligations due under the reinsurance agreements subject
107 to the trust[;

108 (d)]. No later than February twenty-eighth of each year the trustees of the trust shall
109 report to the director in writing [setting forth] the balance of the trust and listing the trust's
110 investments at the preceding year end and shall certify the date of termination of the trust, if so
111 planned, or certify that the trust [shall] **will** not expire prior to the next following December
112 thirty-first[;].

113 (e) **The following requirements apply to the following categories of assuming**
114 **insurers:**

115 a. **The trust fund for a single assuming insurer shall consist of funds in trust in an**
116 **amount not less than the assuming insurer's liabilities attributable to reinsurance ceded**
117 **by the United States ceding insurers, and, in addition, the assuming insurer shall maintain**
118 **a trusted surplus of not less than twenty million dollars;**

119 b. **In the case of a group incorporated and individual unincorporated underwriters:**

120 (i) **For reinsurance ceded under reinsurance agreements with an inception,**
121 **amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trusted**
122 **account in an amount not less than the group's several liabilities attributable to business**
123 **ceded by United States domiciled ceding insurers to any member of the group;**

124 (ii) **For reinsurance ceded under reinsurance agreements with an inception date on**

125 or before July 31, 1995, and not amended or renewed after that date, notwithstanding the
126 other provisions of this section, the trust shall consist of a trustee account in an amount
127 not less than the group's several insurance and reinsurance liabilities attributable to
128 business in the United States; and

129 (iii) In addition to these trusts, the group shall maintain in trust a trusted surplus
130 of which one hundred million dollars shall be held jointly for the benefit of the United
131 States domiciled ceding insurers of any member of the group for all years of account;

132 c. The incorporated members of the group shall not be engaged in any business
133 other than underwriting as a member of the group and shall be subject to the same level
134 of regulation and solvency control by the group's domiciliary regulator as are the
135 unincorporated members;

136 d. Within ninety days after its financial statements are due to be filed with the
137 group's domiciliary regulator, the group shall provide to the director an annual
138 certification by the group's domiciliary regulator of the solvency of each underwriter
139 member; or if a certification is unavailable, financial statements, prepared by independent
140 public accountants, of each underwriter member of the group;

141 (5) Credit shall be allowed when the reinsurance is ceded to an assuming insurer
142 not meeting the requirements of subdivision (1), (2), (3), or (4) of this subsection, but only
143 as to the insurance of risks located in jurisdictions where the reinsurance is required by
144 applicable law or regulation of that jurisdiction;

145 [(5)] (6) If the assuming insurer is not licensed or accredited to transact insurance or
146 reinsurance in this state, the credit permitted by subdivisions (3) and (4) of this subsection shall
147 not be allowed unless the assuming insurer agrees in the reinsurance agreements:

148 (a) That in the event of the failure of the assuming insurer to perform its obligations
149 under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding
150 insurer shall submit to the jurisdiction of the courts of this state, will comply with all
151 requirements necessary to give such courts jurisdiction, and will abide by the final decisions of
152 such courts or of any appellate courts in this state in the event of an appeal; and

153 (b) To designate the director or a designated attorney as its true and lawful attorney upon
154 whom may be served any lawful process in any action, suit or proceeding instituted by or on
155 behalf of the ceding company. This [provision] **paragraph** is not intended to conflict with or
156 override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if
157 [such an] **this** obligation is created in the agreement [and the jurisdiction and situs of the
158 arbitration is the state of Missouri];

159 (7) If the assuming insurer does not meet the requirements of subdivision (1), (2),
160 or (3) of this subsection, the credit permitted by subdivision (4) of this subsection shall not

161 be allowed unless the assuming insurer agrees in the trust agreements to the following
162 conditions:

163 (a) Notwithstanding any other provisions in the trust instrument, if the trust fund
164 is inadequate because it contains an amount less than the amount required by paragraph
165 (e) of subdivision (4) of this subsection, or if the grantor of the trust has been declared
166 insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings
167 under the laws of its state or country of domicile, the trustee shall comply with an order
168 of the commissioner or director with regulatory oversight over the trust or with an order
169 of a court of competent jurisdiction directing the trustee to transfer to the commissioner
170 or director with regulatory oversight all of the assets of the trust fund;

171 (b) The assets shall be distributed by and claims shall be filed with and valued by
172 the commissioner or director with regulatory oversight in accordance with the laws of the
173 state in which the trust is domiciled that are applicable to the liquidation of domestic
174 insurance companies;

175 (c) If the commissioner or director with regulatory oversight determines that the
176 assets of the trust fund or any part thereof are not necessary to satisfy the claims of the
177 United States ceding insurers of the grantor of the trust, the assets or part thereof shall be
178 returned by the commissioner or director with regulatory oversight to the trustee for
179 distribution in accordance with the trust agreement; and

180 (d) The grantor shall waive any right otherwise available to it under United States
181 law that is inconsistent with this subsection.

182 [2. A] 3. An asset or reduction from liability for the reinsurance ceded by a domestic
183 insurer to an assuming insurer not meeting the requirements of subsection [1] 2 of this section
184 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer [and
185 such]. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer,
186 including funds held in trust for the ceding insurer, under a reinsurance contract with [such] the
187 assuming insurer as security for the payment of obligations thereunder, if [such] the security is
188 held in the United States subject to withdrawal solely by, and under the exclusive control of, the
189 ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as
190 defined in subdivision (2) of subsection [3] 4 of this section. This security may be in the form
191 of:

192 (1) Cash;

193 (2) Securities listed by the securities valuation office of the National Association of
194 Insurance Commissioners and qualifying as admitted assets;

195 (3) (a) Clean, irrevocable, unconditional letters of credit, as defined in subdivision (1)
196 of subsection [3] 4 of this section, issued or confirmed by a qualified United States financial

197 institution no later than December thirty-first [with respect to] **of** the year for which filing is
198 being made, and in the possession of, **or in trust for**, the ceding company on or before the filing
199 date of its annual statement.

200 (b) Letters of credit meeting applicable standards of issuer acceptability as of the dates
201 of their issuance or confirmation, notwithstanding the issuing or confirming institution's
202 subsequent failure to meet applicable standards of issuer acceptability, shall continue to be
203 acceptable as security until their expiration, extension, renewal, modification or amendment,
204 whichever first occurs;

205 (4) Any other form of security acceptable to the director [and approved by the attorney
206 general].

207 [3.] **4.** (1) For purposes of subdivision (3) of subsection [2] **3** of this section, a "qualified
208 United States financial institution" means an institution that:

209 (a) Is organized or, in the case of a United States office of a foreign banking
210 organization, licensed under the laws of the United States or any state thereof;

211 (b) Is regulated, supervised and examined by federal or state authorities having
212 regulatory authority over banks and trust companies; and

213 (c) Has been determined by either the director, or the securities valuation office of the
214 National Association of Insurance Commissioners, to meet such standards of financial condition
215 and standing as are considered necessary and appropriate to regulate the quality of financial
216 institutions whose letters of credit will be acceptable to the director.

217 (2) A "qualified United States financial institution" means, for purposes of those
218 provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust,
219 an institution that:

220 (a) Is organized, or in the case of a United States branch or agency office of a foreign
221 banking organization, licensed under the laws of the United States or any state thereof and has
222 been granted authority to operate with fiduciary powers; and

223 (b) Is regulated, supervised and examined by federal or state authorities having
224 regulatory authority over banks and trust companies.

225 [4.] **5.** The director may adopt rules and regulations implementing the provisions of this
226 section.

227 [5.] **6. (1)** The director shall disallow any credit as an asset or as a deduction from
228 liability for any reinsurance found by him to have been arranged for the purpose principally of
229 deception as to the ceding company's financial condition as of the date of any financial statement
230 of the company. Without limiting the general purport of this provision, reinsurance of any
231 substantial part of the company's outstanding risks contracted for in fact within four months prior
232 to the date of any such financial statement and canceled in fact within four months after the date

of such statement, or reinsurance under which the assuming insurer bears no substantial insurance risk or substantial risk of net loss to itself, shall prima facie be deemed to have been arranged for the purpose principally of deception within the intent of this provision.

(2) (a) The director shall also disallow **as an asset or deduction from liability to any ceding insurer** any credit for reinsurance unless the reinsurance is payable to the ceding company, and if it be impaired or insolvent to its [rehabilitator or] receiver, by the assuming insurer on the basis of the liability of the ceding company under the contracts reinsured without diminution because of the insolvency of the ceding company.

(b) **Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except:**

a. **Where the contract of insurance or reinsurance specifically provides for payment to the named insured, assignee, or named beneficiary of the policy issued by the ceding insurer in the event of the insolvency of the ceding insurer; or**

b. **Where the assuming insurer, with the consent of the direct insured or insureds, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.**

(c) **Notwithstanding paragraphs (a) and (b) of this subdivision, in the event that a life and health insurance guaranty association has made the election to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, then the reinsurer's liability to pay covered reinsured claims shall continue under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims shall only be made by the reinsurer pursuant to the direction of the guaranty association or its designated successor. Any payment made at the direction of the guaranty association or its designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for such claim payment.**

(d) **The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense in the proceeding where such claim is to be adjudicated any defenses which it deems available to the ceding insurer, or its liquidator. Such expense may be filed as a claim against the insolvent ceding insurer to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two or more assuming insurers are involved in the same claim and a**

269 **majority in interest elect to interpose a defense to such claim, the expense shall be**
270 **apportioned in accordance with the terms of the reinsurance agreement as though such**
271 **expense had been incurred by the ceding insurer.**

272 [6. After an insurer has been declared insolvent the liquidator or receiver of such insurer
273 shall file with the director a statement which shall reflect the claims reserves (including incurred
274 but not reported losses) and unearned premium reserves which have been established by the
275 liquidator or receiver and which shall also set forth the amounts of such reserves that are
276 allocable to particular reinsurers of the insolvent company. Each such statement shall be filed
277 by each liquidator or receiver not less frequently than annually and shall be considered for all
278 intents and purposes as the annual statement which was required to be filed by the insurer with
279 the director prior to the liquidation proceedings.] **7.** To the extent that any reinsurer of an
280 insurance company in liquidation would have been required under any agreement pertaining to
281 reinsurance to post letters of credit or other security prior to an order of liquidation to cover such
282 reserves reflected upon a statement [required to post letters of credit or other security to cover
283 such] **filed with a regulatory authority such reinsurer shall be required to post letters of**
284 **credit to other security to cover** reserves after a company has been placed in liquidation or
285 receivership. [If a reinsurer shall fail to post letters of credit or other security required by a
286 reinsurance agreement or the provisions of this section, the director may issue an order barring
287 such reinsurer from thereafter reinsuring any insurance company which is incorporated under the
288 laws of the state of Missouri or admitted to do business in the state of Missouri.

289 **7.] The provisions of section 375.420 shall not apply to any action, suit or**
290 **proceeding by a ceding insurer against an assuming insurer arising out of a contract of**
291 **reinsurance effectuated in accordance with the laws of Missouri.**

292 **8.** The provisions of this section shall become effective on January 1, [1992] **2003**, and
293 shall be applicable to the financial statements of a reinsurer as of December 31, [1991] **2002**.